

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA**

Case Number:

INGRID CONNELLY, individually
and on behalf of those similarly situated,

Plaintiff,

vs.

DEMAND FOR JURY TRIAL

GREGORY FUNDING LLC,

Defendant.

_____ /

CLASS ACTION COMPLAINT

Plaintiff, INGRID CONNELLY (“Connelly”) individually and on behalf of those similarly situated, by and through her undersigned counsel, bring this class action lawsuit against Defendant GREGORY FUNDING LLC., (“Defendant” or “GREGORY”) for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (the “FDCPA”), Florida Consumer Collection Practices Act, Fla. Stat. § 559.55, *et seq.* (“FCCPA”), and Florida Deceptive and Unfair Trade Practices Act, Fla Stat. § 501.201, *et seq.* (“FDUTPA”), and alleges the following:

NATURE OF THE ACTION

1. This is a putative class action brought under rule 23 of the Federal Rules of Civil Procedure seeking damages and injunctive relief to redress the unfair and deceptive practices committed by GREGORY in connection with its home mortgage loan servicing business.

GREGORY services home loans according to uniform practices designed to maximize fees assessed on consumers' accounts when they are behind on their payments.

PARTIES JURISDICTION AND VENUE

2. Plaintiff Ingrid Connolly is an individual citizen of the State of Florida, residing in Palm Beach County. At all times material, Ms. Connelly was the owner of real property located at 1752 S.W. Angelo Street, Port St. Lucie, Florida 34953.

3. Defendant GREGORY is a Delaware corporation with its principal place of business located in Portland, Oregon.

4. This Court has general diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and there is complete diversity between the Plaintiff and Defendant. This Court also has jurisdiction over this matter pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §§1332(d). CAFA's requirements are satisfied in that (1) the members of the Class exceed 100; (2) the citizenship of at least one proposed Class member is different from that of the Defendant; and (3) the matter in controversy, after aggregating the claims of the proposed Class members, exceeds \$5,000,000.00, exclusive of interest and costs.

5. The Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this action arises out of the FDCPA, a federal statute. The Court also has supplemental jurisdiction over the FDUTPA and Section 701.04(1)(a), Florida Statutes claims under 28 U.S.C. § 1367, because these claims are so related to the federal FDCPA claims that they form part of the same case or controversy under Article III of the United States Constitution.

6. Venue is proper in the United States District Court in and for the Southern District of Florida pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to the Plaintiff's claims occurred in this district.

7. All conditions precedent to the filing of this action, if any, have been performed, have occurred, or have been waived.

FDCPA STATUTORY STRUCTURE

8. The purpose of the FDCPA is “to eliminate abusive debt collection practices . . . to promote consistent State action to protect consumers against debt collection abuses...” 15 U.S.C. § 1692.

9. The FDCPA generally prohibits debt collectors, including GREGORY, from using “any false, deceptive, or misleading representation or means in connection with the collection of any debt” [§ 1692e], and the use of “unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f, including, but not limited to:

- c. False representations or misrepresentations of “the character, amount, or legal status of any debt.” *Id.* at § 1692e(2)(A);
- d. False representations or misrepresentations of any “compensation which may be lawfully received by [the] debt collector for the collection of a debt.” *Id.* at § 1692e(2)(B);
- e. “The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.” *Id.* at § 1692f(1); and

- f. “The use of any false representation or deceptive means to collect or attempt to collect” a debt. *Id.* at § 1692e (10).
10. The FDCPA provides for actual damages, classwide statutory damages, and attorneys’ fees and expenses.

FCCPA STATUTORY STRUCTURE

11. The purpose of the FCCPA is to “provide the consumer with the most protection possible.” *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1192 (11th Cir. 2010) (citing § 559.552, Fla. Stat.).
12. Like the FDCPA, the FCCPA prohibits persons, including GREGORY, from engaging in certain abusive practices in the collection of consumer debts. *See generally* § 559.72, Fla. Stat.
13. Specifically, the FCCPA states that no person, including GREGORY, shall “claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate, or assert the existence of some other legal right when such person knows that the right does not exist.” § 559.72(9), Fla. Stat. The FCCPA defines both “debt” and “consumer debt” as “any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.” § 559.55(6). A “consumer” is defined as “any natural person obligated or allegedly obligated to pay any debt.” § 559.55(8).

14. The FCCPA provides for actual damages, classwide statutory damages, punitive damages, and attorneys' fees and expenses.

FDUTPA STATUTORY STRUCTURE

15. FDUTPA is a Florida State consumer protection statute designed to protect the consuming public from those who engage in unfair methods of competition, unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce. Fla. Stat. §501.202(2).

16. FDUTPA imposes liability on any person or entity who engages in “unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce...” Fla. Stat. § 501.204(1).

17. The remedies available under FDUTPA provide for recovery of actual damages. That recovery is “in addition to remedies otherwise available for the same conduct under state or local law.” Fla. Stat. § 501.213; *Delgado v. J.W. Courtesy Pontiac GMC-Truck, Inc.*, 693 So. 2d 602, 605 (Fla. 2d DCA 1997).

COMMON FACTUAL ALLEGATIONS

18. GREGORY is an entity that at all relevant times was engaged in the business of attempting to collect a “debt” from Plaintiff, as defined by 15 U.S.C § 1692a(5) and by Fla. Stat. § 559.55(7).

19. GREGORY is a “debt collector” as defined in the FDCPA, § 1692a(6) and Fla Stat. § 559.55(7), in that it acquired the servicing of the loans at issue after default and uses the U.S. Mail in a business for the principal purpose of which is the collection of any debts, or who

regularly collects or attempts to collect, directly or indirectly, debts owed or asserted to be owed or due by another.

20. GREGORY is a mortgage loan servicer that regularly services mortgage loans in Florida, including loans owned or assigned by Fannie Mae and Freddie Mac.

21. The loan servicer's duties and obligations are clearly filled in and defined by the Fannie Mae or Freddie Mac written Seller/Servicer Guidelines (the "Guidelines") when the loan is either serviced by the lender itself or sold to third-party servicer entities.¹

22. In this instance, the loans at issue affecting the Plaintiff and the Class Members are serviced by GREGORY; therefore, GREGORY is required to comply with all servicing guidelines.

23. In its role as mortgage loan servicer, GREGORY was responsible for preparation of items concerning the Note and Mortgage including, but not limited to, preparing and sending monthly statements, accounting for credit and debits on the Note, calculating, collecting, and disbursing escrow amounts, sending notices, overseeing the judicial foreclosure process including providing information for the same, and calculating payoff figures and transmitting payoff figures.

24. Additionally, as part of its loan servicing responsibilities, GREGORY regularly issues loan payoff statements, collects loan payoff payments, and processes the paperwork necessary to release the mortgage lien once payment has been satisfied.

25. Payoff Statements generated by GREGORY are uniform in composition and form.

¹ Fannie Mae Servicing guidelines can be found at <https://servicing-guide.fanniemae.com/>; Freddie Mac Servicing Guidelines can be found at <https://sf.freddie-mac.com/tools-learning/sellerservicer-guide/overview>

26. To pay off the mortgage loan being serviced by GREGORY, borrowers are directed to deliver the payoff amount to GREGORY.

27. At the very top of the letter immediately following the salutation “Dear” GREGORY provides borrowers with its wire instructions to pay off the loan. C.f., Exhibit B.

28. However, payment by wire transfer results in GREGORY charging an additional \$6.00 “Wire Fee” to the borrower, to receive the wire, which is a fee that is not authorized by the mortgage agreement, servicing guidelines, or permitted by law. This \$6.00 is also included in the total “Payoff Amount” a borrower must pay to satisfy the loan.

29. The Payoff collection letter GREGORY sends is designed to encourage and makes consumers believe they must incur the additional cost of the wire fee for the mortgage to be paid off properly. Courts have routinely found actions such as this violate the FDCPA. *See e.g., Shami v. National Enterprise Systems*, No. 09-cv-722 (RRM)(VVP), 2010 WL 3824151 at *4 (E.D.N.Y. Sept. 23, 2010).

30. GREGORY is fully aware and has actual knowledge that the standard mortgage loan agreements it services, including Plaintiff’s loan, does not authorize the charging of the “Wire Fee.” Specifically, as servicer, GREGORY has direct access to and copies of the standard mortgage loan agreements for Plaintiff and the Members of Class. GREGORY as a sophisticated and experienced servicer has actual knowledge of the types and amounts of fees it is allowed to charge pursuant to both the standard mortgage loan agreement and the servicing guidelines it is bound by.

31. In addition to the unauthorized and impermissible “Wire Fee” charged, GREGORY includes on its uniform payoff statement a charge for “Reconveyance” in the amount

of \$20.00. There is no explanation as to what this “Reconveyance” fee specifically is. If this purported “Reconveyance” fee is the cost GREGORY supposedly pay to the county recorder’s office to record the satisfaction of mortgage, releasing the lien from the property GREGORY is servicing, it too violates the mortgage agreements and uniform servicing guidelines.

32. Florida law requires the lender or its agent to prepare and record the documents necessary to release a mortgage lien upon payoff of the mortgage. *See Fla. Stat. § 701.04(2)*. Florida law is however silent as to whether a lender is allowed or prohibited from charging the borrower for the costs associated with recording the satisfaction. In absence of direct prohibition by law, the mortgage agreement provides that the Borrower shall pay any recording costs associated with releasing the lien. However, only *actual* recording costs are allowed.

33. Recording fees for legal documents are set by the county in which the document is being recorded. In the State of Florida, the recording fee charged by the county recording office for the first page is \$10.00 and each additional page recorded is \$8.50.

34. Upon information and belief, the release of mortgage document GREGORY prepares and records once a mortgage has been fully paid off is a one-page document that is uniform in form and content, the only differences being the specific mortgage lien being released. As this document is one page the recording fees actually charged to record the lien release is \$10.00.

35. However, upon information and belief, GREGORY deceptively retains \$10.00 of the “Reconveyance” fee for itself as profit.

36. The amounts GREGORY charges for the “Reconveyance” fee is deceptive, unlawful, and unauthorized and like the “Wire Fee” are essentially nothing more than “processing fees” or “convenience fees” which is a violation of Florida state law.

37. Where, like here, neither the contract creating the debt nor any law authorizes the charging of “processing fees,” such as those being charged by GREGORY, such fees have been held to be unlawful when the debt collector retains any portion of the fee instead of passing the entire fee to the third-party vendor or processor.

38. GREGORY is fully aware and has actual knowledge that the standard mortgage loan agreements it services, including those of the Plaintiff, do not authorize the charging of excessive fees for services that were not performed such as the “Reconveyance” fee. Specifically, as servicer, GREGORY has direct access to and copies of the standard mortgage loan agreements for Plaintiff and the Members of Class. GREGORY as a sophisticated and experienced servicer has actual knowledge of the types and amounts of fees it is allowed to charge pursuant to both the standard mortgage loan agreement and the servicing guidelines it is bound by. Additionally, GREGORY has extensive knowledge in recording mortgage lien releases and knows the documents are one page in length. Moreover, GREGORY has direct knowledge that the recording fees for recording a one-page document in the State of Florida is \$10.00.

39. Moreover, as a sophisticated and experienced mortgage loan servicer, GREGORY is aware that it is prohibited from charging fees that it has not incurred, or that were estimates. In a highly publicized decision in 2015, the Eleventh Circuit reversed the district court’s grant of summary judgment on the FDCPA and FCCPA claims, opining, among other things, that the

Defendants were not permitted to charge “estimated” fees that had not yet incurred in their reinstatement of loan letter. See *Prescott v. Seterus, Inc.*, No. 15- 10038, 2015 WL 7769235, at *2-6 (11th Cir. Dec. 3, 2015) (“[The Defendants] violated the FDCPA and FCCPA by charging [the Plaintiffs] estimated attorney’s fees that they had not agreed to pay in the security agreement.”).

40. As a result of this decision, media and trade publications consistently warned the mortgage servicing industry against including estimated fees in reinstatement or payoff letters, particularly those in the Eleventh Circuit where the *Prescott* case is binding precedent.

41. Accordingly, GREGORY is fully aware and has actual knowledge that the standard mortgage loan agreements it services, including those of the Plaintiff, do not authorize the charging of fees which are estimates or not actually incurred such as the “Wire Fee.” Specifically, as servicer, GREGORY has direct access to and copies of the standard mortgage loan agreements for Plaintiff and the Members of the Class. GREGORY as a sophisticated and experienced servicer has actual knowledge of the types and amounts of fees it is allowed to charge pursuant to both the standard mortgage loan agreement and the servicing guidelines it is bound by.

42. GREGORY knows that demands for payment containing the non-itemized amorphous charge of “Recoverable Balance” is misleading as it does not give consumers, such as Plaintiff and Class Members, the ability to knowledgeably assess the validity of the claimed debt.

43. Additionally, these demands were a direct breach of each of the following provisions permitting only recovery of amounts actually incurred: (1) Paragraph 9 of the standard mortgage loan agreement permitted GREGORY to recover “amounts disbursed” in

protecting the lender's interest and rights in the standard mortgage loan agreement; (2) Paragraph 14 of the standard mortgage loan agreement prohibited GREGORY from charging estimated fees, unauthorized fees, or excessive fees, stating "[l]ender may not charge fees that are expressly prohibited in this Security Instrument or by Applicable Law"; and (3) Paragraph 22 of the standard mortgage loan agreement permitted GREGORY to collect "expenses incurred in pursuing" certain actions under the Paragraph which governed default, notice of default, actions to cure default, and reinstatement of loans.

44. Therefore, GREGORY also knew demanding payment of fees not yet incurred was not permitted because it violated the very mortgage loan agreements it serviced.

FACTUAL ALLEGATIONS TO PLAINTIFF'S TRANSACTIONS

45. On or about January 18, 2006, Plaintiff took out a Fannie Mae/Freddie Mac standard mortgage loan on the property located at 1752 S.W. Angelo Street, Port St. Lucie, Florida 34953 (the "Subject Property") in the amount of \$207,200.00. The initial lender was Citywide Mortgage Corporation. A copy of Plaintiff's operative mortgage agreement for the Subject Property is attached hereto as Exhibit "A."

46. On July 24, 2019, Plaintiff executed a Loan Modification Agreement in favor of MTGLQ Investors, L.P. as lender.

47. Shortly thereafter, due to financial hardship, Plaintiff became delinquent and defaulted on her mortgage.

48. On January 21, 2021, Ajax Mortgage Loan Trust 2020-A, Mortgage-Backed Securities, Series 2020-A, By U.S. Bank National Association, as Indenture Trustee, instituted

foreclosure proceedings in the Circuit Court of the Nineteenth judicial Circuit in and for St. Lucie County, Case No: 2021CA000121.

49. At a time after Plaintiff was in default, Defendant GREGORY obtained the rights to service Plaintiff's mortgage loan at issue.

50. At all times material GREGORY was the servicer on Plaintiff's standard mortgage loan.

51. On or about August 2021 Plaintiff made requests for payoff figures to GREGORY related to the Subject Property.

52. On or about August 19, 2021, GREGORY knowingly, willfully, and intentionally transmitted a Payoff Statement concerning the Subject Property to Plaintiff, a copy of which is attached as Exhibit "B." The above-mentioned Payoff Statement was received by Plaintiff from GREGORY.

53. Within the Payoff Statement's total fees, GREGORY knowingly, intentionally, and willfully included charges for "Reconveyance" fees in the amount of \$20.00, and "Wire Fee" of \$6.00, even though no charges had accrued as of the time of the Payoff.

54. Additionally, as stated above, the mortgage which encumbers the Subject Property does not allow for the Wire Fee, and any recording fee would only be \$10.00.

55. GREGORY did not disclose to the Plaintiff or other Class Members that these unauthorized and/or excessive fees were not allowed under their mortgage, were not authorized under law, and exceeded the actual cost to GREGORY by a wide margin; the difference being retained by GREGORY.

CLASS ACTION ALLEGATIONS

56. Plaintiff brings this action individually and on behalf of all individuals similarly situated pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of the following “National Class”:

All persons in the United States who either (a) were charged a Wire Fee by GREGORY FUNDING LLC in order to satisfy their mortgage, and/or (b) were charged a Wire Fee and/or “Reconveyance” Fee by GREGORY FUNDING LLC prior to such fee having occurred or otherwise existed.

57. In addition to the national class, Plaintiff bring a subclass on behalf of Florida residents pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3), the “Florida Class”:

All persons in the State of Florida who either (a) were charged a Wire Fee by GREGORY FUNDING LLC in order to satisfy their mortgage, and/or (b) were charged a Wire Fee and/or “Reconveyance” Fee by GREGORY FUNDING LLC prior to such fee having occurred or otherwise existed.

58. Plaintiff reserves the right to modify or amend the proposed class definitions before the Court determines whether certification is appropriate.

59. Excluded from the National Class and Florida Class are Defendant, and Defendant’s parents, subsidiaries, affiliates, officers and directors, any entity in which Defendant has a controlling interest, all mortgagors who make a timely election to be excluded, governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members, and members of the staffs of the judges to whom this case should be assigned.

60. Under Fed. R. Civ. P. 23(a)(1), the proposed class is made up of at least 40 persons, the joinder of whom are impracticable except by means of a class action. While the exact number of Class Members cannot be determined without discovery, Plaintiff believes that

the Class consists of at least thousands of members, the exact number of class members, upon information and belief, can be ascertained through discovery and review of Defendant's business records.

61. The proposed Class is ascertainable because it is defined by reference to objective criteria. In addition, and upon information and belief, the names and addresses of all members of the proposed class can be identified in business records maintained by Defendant.

62. In conformance with Fed. R. Civ. P. 23(a)(2), all Class Members' claims (including Plaintiff's) are unified in that they arise from the same improper charging and collection practices arising out of materially identical circumstances. Plaintiff's interests are coincident with, and not antagonistic to, those of the other members of the proposed class.

63. Consistent with Fed. R. Civ. P. 23(a)(3), Plaintiff is a member of the Class. her claims are typical of all other Class Members. All Class Members' claims are unified, as all were victims of the same collection and charging practices.

64. Consistent with Fed. R. Civ. P. 23(a)(4), Plaintiff will adequately represent the class because she has interests in common with the proposed Class Members and she has retained attorneys who are experienced in class action litigation.

65. Pursuant to Fed. R. Civ. P. 23(b)(3), there is a well-defined community of interest in the questions of law and fact involving and affecting the class to be represented by Plaintiff. Common questions of law and/or fact predominate over any questions affecting only individual members of the class. Common questions include, but are not limited to, the following:

- a. Whether GREGORY's "Wire Fee" were reasonable given that bank wire fees were not authorized by law or agreement;

- b. Whether GREGORY's "Wire Fee" were reasonable given that bank wire fees should have been waived or otherwise not charged;
 - c. Whether GREGORY's impositions of "Wire Fee" charges violate the FDCPA;
 - d. Whether GREGORY's impositions of "Wire Fee" charges violate Fla. Stat. § 501.201, *et seq.*;
 - e. Whether GREGORY's "Reconveyance" charges were reasonable given they were in excess of actual recording charges;
 - f. Whether GREGORY's impositions of "Reconveyance" charges violate the FDCPA;
 - g. Whether GREGORY's impositions of "Reconveyance" charges violate Fla. Stat. § 501.201, *et seq.*;
 - h. Whether GREGORY's charges of "Wire Fee" and "Recording Fee" before such charges actually occurred were just and reasonable;
 - i. Whether Plaintiff and Class Members are entitled to statutory damages under the FDCPA and the amounts thereof;
 - j. Whether Plaintiff and Class Members are entitled to statutory damages under Fla. Stat. § 559.55, *et seq.* and the amounts thereof; and
 - k. Whether Plaintiff and Class Members are entitled to statutory damages under Fla. Stat. § 501.201, *et seq.* and the amounts thereof.
66. Further, the prosecution of separate actions by individual members of the class would create a risk of:

- a. Inconsistent or varying adjudications concerning individual members of the class that would establish incompatible standards of conduct for the defendant opposing the class; and
- b. Adjudication with respect to individual members of the class that would, as a practical matter, be dispositive of the interests of other members not parties to such adjudications, and/or substantially impair or impede the ability of other non-party class members to protect such individual interests.

67. The class action method is appropriate for the fair and efficient prosecution of this action.

68. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the amount of each Class Member's claims are small relative to the complexity of the litigation, and due to the financial resources of GREGORY, no member of the Class could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the members of the Class will continue to suffer losses and GREGORY's misconduct will proceed without remedy.

69. Even if members of the Class could afford such individual litigation, the court system could not. Given the complex legal and factual issues involved, individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows claims to be heard which might otherwise go unheard because of the relative expense of bringing individual lawsuits, and

provides the benefits of adjudication, economies of scale, and comprehensive supervision by a single court.

70. Alternatively, certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(2) because it is clear that declaratory and injunctive relief is appropriate respecting the Class as a whole.

COUNT I

VIOLATION OF THE FAIR DEBT COLLECTION ACT 15 USC § 1692e

71. Plaintiff repeats and realleges paragraphs 1 through 55 as if fully stated herein.

72. Plaintiff and each Class Member were a “consumer” as defined by 15 U.S.C. § 1692a(3).

73. The mortgage loans encumbering the properties at issue of the Plaintiff and Class Members, which GREGORY service, are debts under the FDCPA because each is “an[] obligation or alleged obligation of a consumer to pay money arising out of a transaction . . . [that is]...primarily for personal, family, or household purposes.” 15 U.S.C. § 1692a(5).

74. Additionally, the improper fees being charged and collected, in the form of the “Wire Fee”, and “Reconveyance”, are incidental to the principal obligation and subject to the Act. 15 U.S.C. § 1692f(1).

75. GREGORY is a “debt collector” of those mortgage loans as defined by 15 U.S.C. § 1692a(6) because it regularly attempts to collect, and collects, amounts owed or asserted to be owed or due another, including the mortgage debts from Plaintiff and Class Members via Payoff

Statements. The Payoff Statements, described above, uniformly confirmed this by identifying GREGORY as a debt collector. *See* Ex A.

76. GREGORY engaged in direct “communications” with Plaintiff and Class Members as defined by 15 U.S.C. § 1692a(2) when it sent them or their representatives Payoff Statements, purportedly demanding money due for payoff of their mortgage loans, which included the improper fees stated herein.

77. The FDCPA creates a private right of action under 15 U.S.C. § 1692k.

78. Congress created shared, substantive statutory rights of Plaintiff and the Class Members to be privately enforced and protected under the FDCPA, which GREGORY has violated. *See* 15 U.S.C. §§ 1692, 1692e, 1692f.

79. 15 U.S.C. §1692e states, in relevant part, that:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

.....

(2) The false representation of—

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

.....

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

80. Based on the foregoing allegations, GREGORY used deceptive means of collecting debts—which contained illegal fees for “Wire Fee”, and excessive fees for

“Reconveyance”, incorporating them—in violation of 15 U.S.C. § 1692e(10), because it represented them in Payoff Statements in a confusing, inaccurate manner, or in a manner that would likely mislead a consumer.

81. Based on the foregoing allegations, GREGORY violated 15 U.S.C. § 1692e(2)(A) because through its Payoff Statements imposing “Wire Fee”, and excessive fees for “Reconveyance”, incorporating them, it falsely or in a misleading manner stated, or misrepresented, the amount, character, or status of the amounts needed to payoff Plaintiff’s and Class Members’ mortgage debts.

82. Based on the foregoing allegations, GREGORY violated 15 U.S.C. § 1692e(2)(B) when through its Payoff Statements imposing “Wire Fee”, and excessive fees for “Reconveyance”, it falsely or in a misleading manner stated, or misrepresented, the compensation that it might lawfully receive from Plaintiff and Class Members.

83. These violations of FDCPA caused injury to Plaintiff and Class Members by violating the foregoing substantive FDCPA rights.

84. As a result of these violations, Plaintiff and Class Members are entitled to statutory damages together with reasonable attorneys’ fees and costs under 15 U.S.C. § 1692(k).

COUNT II

VIOLATION OF THE FAIR DEBT COLLECTION ACT 15 USC § 1692f

85. Plaintiff repeats and realleges paragraphs 1 through 55 as if fully stated herein.

86. Plaintiff and each Class Member were a “consumer” as defined by 15 U.S.C. § 1692a(3).

87. The mortgage loans encumbering the property of Plaintiff and Class Members, which GREGORY service, are debts under the FDCPA because each is “an[] obligation or alleged obligation of a consumer to pay money arising out of a transaction . . . [that is]...primarily for personal, family, or household purposes.” 15 U.S.C. § 1692a(5).

88. Additionally, the improper fees being charged and collected, in the form of the “Wire Fee”, and “Reconveyance” are incidental to the principal obligation and subject to the Act. 15 U.S.C. § 1692f(1).

89. GREGORY is a “debt collector” of those mortgage loans as defined by 15 U.S.C. § 1692a(6) because it regularly attempts to collect, and collects, amounts owed or asserted to be owed or due another, including the mortgage debts from Plaintiff and Class Members via Payoff Statements. The Payoff Statements described above uniformly confirmed this by identifying GREGORY as a debt collector.

90. GREGORY engaged in direct “communications” with Plaintiff and Class Members as defined by 15 U.S.C. § 1692a(2) when it sent them or their representatives Payoff Statements, purportedly demanding money due for payoff of their mortgage loans, which included the improper fees stated herein.

91. The FDCPA creates a private right of action under 15 U.S.C. § 1692k.

92. 15 U.S.C. § 1692f states, in relevant part:

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

93. Based on the foregoing allegations, GREGORY used unfair means of collecting amounts for “Wire Fee”, and excessive fees for “Reconveyance”, incorporating them in violation of 15 U.S.C. § 1692f, because the amounts were not expressly authorized by Plaintiff’s and Class Members’ mortgage instruments creating their debts as they must be under those instruments, or they were not permitted by law.

94. These violations of FDCPA caused injury to Plaintiff and Class Members by violating the foregoing substantive FDCPA rights.

95. As a result of these violations, Plaintiff and Class Members are entitled to statutory damages together with reasonable attorneys’ fees and costs under 15 U.S.C. § 1692(k).

COUNT III

VIOLATIONS OF FLORIDA’S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

FLA. STAT. §§ 501.201, et seq.

96. Plaintiff repeats and realleges paragraphs 1 through 55 as if fully stated herein.

97. Florida’s Deceptive and Unfair Trade Practices Act (Fla. Stat. §§ 501.201, *et seq.*) prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce. Fla. Stat. § 501.202(2).

98. A practice is “deceptive” within the meaning of Florida’s Deceptive and Unfair Trade Practices Act if it is likely to mislead consumers.

99. Plaintiff and Class Members are consumers as defined by section 501.203, Fla. Stat. GREGORY is engaged in trade or commerce within the meaning of the FDUTPA.

100. GREGORY violated the FDUTPA by engaging in the unfair and deceptive practices as described herein, which offend public policies and are immoral, unethical, unscrupulous and injurious to consumers.

101. Plaintiff and Class Members are consumers who have been aggrieved GREGORY's unfair and deceptive practices by paying a "Wire Fee" to GREGORY for making a loan payoff by wire transfer, as deceptively encouraged by GREGORY, in connection with their residential mortgage loans owned or serviced by GREGORY.

102. Additionally, Plaintiff and Class Members are consumers who have been aggrieved GREGORY's unfair and deceptive practices by paying excessive "Reconveyance" fees to GREGORY for recording the one-page satisfaction/release of mortgage lien, when such recording fees only amounted to \$10.00, and GREGORY retained the difference as profit.

103. The harm suffered by Plaintiff and the Class Members was directly and proximately caused by the deceptive and unfair practices of GREGORY, as more fully described herein.

104. Pursuant to sections 501.211(2) and 501.2105, Fla. Stat., Plaintiff and the Class Members make claims for actual damages, attorneys' fees and costs.

105. GREGORY still utilizes many of the deceptive acts and practices described above and is still secretly retaining money from every "Wire Fee" and "Reconveyance" fee it charges consumers. Plaintiff and the Class Members have suffered and will continue to suffer irreparable harm if GREGORY continues to engage in such deceptive, unfair, and unreasonable practices. Section 501.211(1) entitles Plaintiff and the Class Members to obtain both declaratory or injunctive relief to put an end to GREGORY's unfair and deceptive scheme.

COUNT IV

VIOLATION OF THE FLORIDA CONSUMER COLLECTION PRACTICES ACT
FLA STAT § 559.72(9)

106. Plaintiff repeats and realleges paragraphs 1 through 55 as if fully stated herein.

107. Section 559.72, Florida Statutes, of the FCCPA mandates that “no person” shall engage in certain practices in collecting consumer debts.

108. GREGORY is a “person” within the meaning of the FCCPA.

109. The mortgage loans encumbering the properties of Plaintiff and Class Members, and being serviced by GREGORY, are each a “debt” under the FCCPA because each one is “an[] obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.” § 559.55(6), Fla. Stat.

110. The FCCPA creates a private right of action. *See* § 559.77, Fla. Stat.

111. The Florida Legislature created shared, substantive statutory rights of Plaintiff and Class Members to be enforced and protected privately under the FCCPA, which GREGORY violated. §§ 559.72, 559.72(9), 559.77, Fla. Stat.

112. Under Section 559.72, Florida Statutes,

In collecting consumer debts, no person shall:

.....

(9) Claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate or assert the existence of some other legal right when such person knows that the right does not exist.

113. Based on the foregoing allegations, GREGORY violated Section 559.72(9), Florida Statutes, by attempting to collect a unauthorized “Wire Fee”, excessive fees for “Reconveyance”, incorporating them, when, as stated above, it knew that the fees, and as a corollary, the total amounts incorporating them, were not legitimate debts.

114. Based on the foregoing allegations, GREGORY violated Section 559.72(9), Florida Statutes, by attempting to collect “Wire Fee”, and excessive fees for “Reconveyance”, incorporating them, when, as stated above, it knew it had no legal right to collect the fees, and as a corollary, no legal right to collect the total amounts incorporating them.

115. These collection practices by GREGORY hides the true character of the alleged debt owed by Plaintiff and Class Members and impairs their ability to knowingly assess the validity of the alleged debt.

116. GREGORY knowingly sent the Payoff Statement and attempted to collect monies from Plaintiff and the Class Members through means that were clearly misleading on its face.

117. These violations of FCCPA caused injury to Plaintiff and Class Members by violating the foregoing substantive FCCPA rights.

118. As a result of these violations, Plaintiff and Class Members are entitled to statutory damages together with reasonable attorney’s fees and costs under Section 559.77, Florida Statutes.

JURY DEMAND

119. Plaintiff respectfully requests a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE Plaintiff, Individually and on behalf of the Class, respectfully request this Court to award against Defendant in favor of Plaintiff and the Class all of the following:

- a. Certifying Plaintiff's claims for class treatment under Federal Rules of Civil Procedure 23, appointing Plaintiff as Class Representatives, and appointing Plaintiff's attorneys as counsel for the Class;
- b. For an order awarding compensatory damages on behalf of Plaintiff and the Class in an amount to be proven at trial;
- c. For judgment for Plaintiff and the Class on their claims in an amount to be proven at trial, for compensatory damages caused by Defendant's unfair or deceptive practices, for treble damages, and for exemplary damages to each Class member for each violation;
- d. For an order enjoining Defendant from continuing its unfair, unlawful, and/or deceptive practices, and any other injunctive relief as may appear necessary and appropriate;
- e. For judgment for Plaintiff and the Class on their federal and state law claims, in an amount to be proven at trial;
- f. For pre-judgment and post-judgment interest as provided for by law or allowed in equity;
- g. For an order awarding Plaintiff and the Class their attorneys' fees and costs; and
- h. Any other relief for Plaintiff and the Class the Court deems just and proper.

Dated: December 14, 2021.

By: Scott D. Hirsch

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